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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,180	05/14/2001	Lavada Campbell Boggs	KCC-14,485	8191

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,180

Applicant(s)

BOGGS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-58 is/are pending in the application.
- 4a) Of the above claim(s) 7,9-11,13,14,20-24 and 28-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,12,15-19 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18-19.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10-14-03 has been entered.

Election/Restrictions

2. Claims 7, 9-11, 13-14, 20-24 and 28-58 remain with drawn from further consideration. Applicants arguments with respect to claims 7, 9-11, 13-14, 20-24 have been considered but are deemed nonpersuasive because Figure 7 does not show these features. These claims will be considered upon indication of allowable subject matter being present in the claim(s) from which they depend. It is noted that the barrier layer in claim 7 is not claimed as that set forth in claim 1.

Claim Language Interpretation

3. Various claim terms have been defined on page 6, line 4-page 14, line 21. All other terminology will be given its common meaning, i.e. dictionary definition. For example, "opposite" is defined as "placed or located directly across from something else or each other; opposite sides of a building".

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-5, 12, 15-19 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by 3M, PCT '264.

See Figures, esp. Figures 5, 8 and 14, page 4, line 15-page 5, line 3, page 7, lines 6-23, page 11, lines 19-31, page 16, lines 24 et seq, page 17, lines 1-7, page 21, line 22-page 24, line 14, and page 27, lines 24-26 of 3M, i.e. the high tension/low stretch zone are adjacent edge 74 while the low tension/high stretch zone is in the midportion as seen in Figure 14, the first facing layer is 76. As best understood of the instant specification at page 2, last paragraph, page 3, lines 8-14 as amended, the definitions on page 7, lines 9-17, and the manufacturing processes of Figures 9-12 and 16, the device as set forth by 3M is made in a single manufacturing process. With regard to the limitation added to claims 1 and 25, Applicant claims a barrier layer having a first surface and a second surface opposite the first surface and at least one filament adjacent the first surface and one filament adjacent the second surface. It is noted that the claims do not require that the barrier layer divide the surfaces which are on opposite, i.e. inner and outer, sides of the layer nor that the filaments only be connected to one surface or that the filaments be directly connected. Therefore since 3M shows a barrier layer 72 having two opposite surfaces, i.e. the rightmost and leftmost anchor portions 14 of each individual diaper cut from 70 in Figure 14, having at least one filament adjacent each surface, i.e. at least one filament 13 extends from the right side to the left side of 72 and thereby adjacent each surface, such meets the claim language. The reference teaches a device which functions as set forth in claims 12, 15-16 and

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19, see page 1, lines 8-9 of 3M. In claims 17-18, Applicant claims the device being swimwear or a feminine hygiene article which capability or function the reference does not explicitly teach. However, the 3M patent teaches all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the same structure of the 3M device would also be capable inherently of the same properties and functions of such claimed structure. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 6 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3M '264 in view of Kimberly Clark EP '550.

Applicant claims a second facing layer bonded to a second side of the zones, i.e. the first facing layer is attached to a first side of the zones. See Figure 14, element 72, page 23, lines 14-19 and page 6, lines 7 et seq of 3M, i.e. the zones have a barrier or backsheet on one side and a facing layer on the other. See KC '550 at page 4, lines 40-55, i.e. interchangeability of a two ply barrier for a one ply barrier. To make the one ply film barrier of 3M a two ply, inner film ply/outer ply nonwoven web barrier instead would be obvious to one of ordinary skill in the art in view of the recognition of the interchangeability as taught by KC '550. In so doing the outer play would be a second facing layer on the second side of the zones.

Response to Arguments

8. Applicants remarks with respect to the prior art on pages 13-14 have been considered but are deemed narrower than the claim language in that opposite surfaces do not have to be the upper and lower planar surfaces of the barrier layer. As pointed out in the claim terminology interpretation section and the prior art rejection opposite surfaces can be surfaces such as portions 14 at the right and left sides of the layer. It should be noted that to interpret "opposite" otherwise would mean that the added matter to claims 1 and 25 is new matter since while Figure 7 and page 27, lines 10-12 teach a barrier layer inserted between first filaments in a low tension and/or high stretch zone, page 25, lines 20-22, page 41, lines 7-10 and Figures 5-6 only teach a barrier layer in one or two zones, i.e. does not teach high tension filaments on inner and outer sides of the layer or high tension filaments on one side and low tension filaments on the other. Figure 5 does show low tension zone filaments on one surface opposite higher tension zone filaments on a second surfaces, i.e. opposite right and left surfaces. The remainder of Applicants remarks have been considered but are either deemed moot in that the issue has not been reraised or deemed nonpersuasive for the reasons given supra.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
December 17, 2003